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PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

DOCKET NO. 2008-0274

Instituting a Proceeding to Investigate
Implementing a Decoupling Mechanism for
Hawaiian Electric Company, Inc., Hawaii Electric
Light Company, Inc., and Maui Electric Company,
Limited

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S
MEMORANDUM IN OPPOSITION TO BLUE PLANET FOUNDATION'S
MOTION TO INTERVENE**

AND

CERTIFICATE OF SERVICE

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HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT
COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO")¹
respectfully submit this Memorandum in Opposition to Blue Planet Foundation's ("Blue Planet")
Motion to Intervene, dated November 13, 2008 ("Motion").²

Blue Planet should be commended for its accomplishments in furtherance of its mission
to change the world's energy culture and raise global awareness regarding renewable energy and

¹ HECO, HELCO and MECO are collectively referred to herein as the "HECO Companies" or "Companies".

² The Motion was served upon HECO by mail on November 13, 2008. Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion" HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation" HAR § 6-61-21(e) states: "Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period." Seven days from November 13, 2008, excluding Saturdays, Sundays and holidays, is Monday, November 24, 2008. Therefore, this Memorandum in Opposition to the Motion is timely filed.

climate change. The HECO Companies particularly appreciate the efforts of Blue Planet and its Executive Director toward establishing “Hawaii as a Clean Energy Model,” and more specifically, through Blue Planet’s contributions to the Hawaii Clean Energy Initiative.

However, with all due respect to Blue Planet, Blue Planet should not be allowed to intervene as a full party in this docket, as: (1) Blue Planet’s interest in general renewable energy issues such as distributed generation and energy efficiency is not reasonably pertinent to the revenue decoupling and ratemaking issues to be addressed in this docket; (2) Blue Planet has not demonstrated that its intervention would assist in the development of a sound record regarding revenue decoupling; (3) Blue Planet has not demonstrated that its intervention will not unduly broaden this issues or delay this proceeding; and (4) Blue Planet has not demonstrated that its interest in revenue decoupling will not be adequately represented by the Consumer Advocate.

Blue Planet has not requested participant status. If Blue Planet is allowed to participate in this docket, however, then Blue Planet should be designated a participant, and not an intervenor party. In addition, Blue Planet should be permitted to participate by filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, Blue Planet’s participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and Blue Planet should be required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission, Title 6, Chapter 61, HAR (the “Commission’s Rules of Practice and Procedure”).

I. DISCUSSION

A. STANDARD FOR INTERVENTION

Motions to intervene are governed by the Commission’s Rules of Practice and Procedure, which pertain to intervention as a party as well as participation without intervention. Blue Planet

has labeled its Motion as a "Motion to Intervene" filed pursuant to HAR § 6-61-55. Under HAR § 6-61-55(a), "A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant."

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the sound discretion of the Commission." In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically states: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to "secure the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the "just, speedy and inexpensive determination" of a proceeding cannot be accomplished if the Commission admits every movant as a party.

B. BACKGROUND

In its Order Initiating Proceeding, filed October 24, 2008 in Docket No. 2008-0274 ("Initiating Order"), the Commission opened this docket for the purpose of examining the

implementation of “a decoupling mechanism for the HECO Companies that would modify the traditional model of ratemaking for the HECO Companies by separating the HECO Companies’ revenues and profits from electricity sales.” Id. at 9, para. 1.

The Initiating Order also recognized that decoupling is, in essence, a form of ratemaking: “Included in the [HCEI Agreement³] is a commitment by the HECO Companies to modify their traditional rate-making model by implementing a decoupling mechanism. Generally, decoupling is a regulatory tool designed to separate a utility’s revenue from changes in energy sales.” Id. at 2.

Further, the Initiating Order recognized the need to expeditiously develop a decoupling mechanism to facilitate the interim decision in HECO’s 2009 test year rate case: “[T]he HECO Companies and the Consumer Advocate agreed that ‘[t]he revenues of the utility will be fully decoupled from sales/revenues beginning with the interim decision in the 2009 Hawaiian Electric Company Rate Case (most likely in the summer of 2009).’” Id. at 4. To that end, the Commission indicated that “to expedite this process, the commission will direct the HECO Companies and the Consumer Advocate to submit to the commission a joint proposal on decoupling that addresses all of the factors identified in their Agreement within sixty days of the date of this Order.” Id. at 5.

On November 13, 2008, Blue Planet filed its Motion to Intervene in this docket. Blue Planet is a public interest foundation whose mission is “[t]o change the world’s energy culture, to raise global awareness in order to develop and adopt practical programs to implement clean, efficient, and renewable energy and to create a global response to our increasingly urgent climate crisis.” Motion at 3.

³ The October 20, 2008 *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and Hawaiian Electric Companies* is referred to as the “HCEI Agreement”.

C. **BLUE PLANET'S MOTION TO INTERVENE SHOULD BE DENIED.**

Blue Planet is recognized for its accomplishments in the areas of renewable energy and climate change. The HECO Companies appreciate and acknowledge the efforts of Blue Planet toward establishing "Hawaii as a Clean Energy Model," and more specifically, through Blue Planet's contributions to the Hawaii Clean Energy Initiative. See Motion at 3-4. As discussed below, however, and with due respect to Blue Planet, Blue Planet's Motion to Intervene as a party should be denied.

1. **Blue Planet Has Not Demonstrated an Interest in Decoupling Sufficient to Warrant its Intervention in this Docket.**

HAR § 6-61-55(b)(2) requires that a motion to intervene make reference to "[t]he nature and extent of the applicant's property, financial, and other interest in the pending matter[.]" With respect to this requirement, Blue Planet states that "insofar as the purpose of this Docket is to support and encourage distributed generation and energy efficiency Blue Planet has a direct interest in the purpose of the Docket." Motion at 6 (emphasis added). This contention does not demonstrate an interest in revenue decoupling sufficient to warrant Blue Planet's intervention as a party.

The express purpose of this docket is to examine the implementation of "a decoupling mechanism for the HECO Companies that would modify the traditional model of ratemaking for the HECO Companies by separating the HECO Companies' revenues and profits from electricity sales." Initiating Order at 9 (emphasis added). Blue Planet's interest in "distributed generation and energy efficiency," by contrast, pertains to general renewable energy issues that are more appropriately addressed in other Commission dockets, some of which may be opened as a result of the HCEI Agreement (e.g., the Feed-In Tariffs docket, Docket No. 2008-0274, opened on October 24, 2008 to examine the rates paid to other parties by the utility for energy; and the

CESP⁴ docket described in HCEI Agreement as a future replacement for the Companies' IRP dockets), and which are not reasonably pertinent to the ratemaking issues associated with severing the economic linkage between utility revenues and sales. Accordingly, Blue Planet's interest in "distributed generation and energy efficiency" is not reasonably pertinent to revenue decoupling or ratemaking.

Blue Planet maintains that "[t]he purpose of [this] Docket . . . is to move the State away from its dependence on imported fossil fuels for electricity and ground transportation, and toward indigenously produced renewable energy and an ethic of energy efficiency."⁵ However, although the Initiating Order explains that the HCEI Agreement is "designed to move the State away from its dependence on fossil fuels" Initiating Order at 2 (quoting HCEI Agreement at 1), it does not provide that moving the State away from fossil fuel dependence is the purpose of this docket. The Commission initiated this docket for the specific purpose of examining the implementation of "a decoupling mechanism for the HECO Companies" Initiating Order at 9. Blue Planet's reliance on the underpinnings of the HCEI Agreement is thus misplaced.

Moreover, the fact that revenue decoupling is addressed in the HCEI Agreement does not render every other clean energy issue addressed in that document pertinent to revenue decoupling. The HCEI Agreement discusses numerous initiatives (in addition to energy efficiency and distributed generation) relating to a variety of clean energy issues including but not limited to: wind power, solar energy, biofuels, feed-in tariffs, renewable portfolio standards, greening transportation, demand response, advanced metering infrastructure, seawater air

⁴ The parties to the HCEI Agreement have agreed to replace the current integrated resource planning ("IRP") process with a Clean Energy Scenario Planning ("CESP") process, which "will provide high level guidance on long term (10-20 years) direction and an Action Plan for near term initiatives (5 years), balancing how the utility will meet its customers' expected energy needs as modified by planned energy efficiency, renewables substitution and demand response, encouraging high levels of renewable and clean energy with distributed resources, while protecting reliability at reasonable costs." HCEI Agreement at 36.

⁵ Motion at 6 (citing Initiating Order at 2) (internal quotations omitted).

conditioning, distributed energy storage, net energy metering, smart grid technologies, the clean energy initiative surcharge and clean energy scenario planning.⁶ Like distributed generation and energy efficiency, these are issues more appropriately addressed in other Commission dockets.

2. Blue Planet Has Not Demonstrated that Its Intervention Will Assist in the Development of a Sound Record Regarding Decoupling.

HAR § 6-61-55(b)(6) requires that motions to intervene make reference to “[t]he extent to which the applicant’s participation can assist in the development of a sound record[.]”

However, Blue Planet’s Motion does not indicate how Blue Planet would contribute to a discussion on developing and implementing a decoupling mechanism. For example, the Motion does not specifically identify any potential witnesses as possessing expertise, knowledge or experience with revenue decoupling and/or ratemaking issues that might assist in the development of a sound record. In addition, Blue Planet has not discussed or provided any examples of any substantive expertise, knowledge or experience that it may itself possess regarding decoupling, which again, involves ratemaking issues related to severing the economic linkage between utility revenues and sales:

Blue Planet maintains that it “can provide documents, information and testimony from Mr. Mikulina and its retained experts on technical and policy matters critical to the investigation of decoupling.” Motion at 8. This statement is unsupported and does not demonstrate that Blue Planet’s intervention as a party would assist in the development of a sound record.

For example, Mr. Mikulina’s work with “the Hawaii Clean Energy Initiative,” “the Sierra Club, Hawaii Chapter,” “Al Gore’s Climate Project,” and studies of “decision theory related to the adoption of photovoltaic systems on Oahu,”⁷ although commendable, does not demonstrate

⁶ See HCEI Agreement §§ 1, 4, 5, 7, 9, 10, 13, 17, 18, 19, 26, 28, 29 and 32, respectively.

⁷ See Motion at 4-5.

that he has substantive expertise in the area of revenue decoupling. Likewise, Blue Planet's participation in the "Global Energy Summit"⁸ does not substantiate Blue Planet's indication that it could provide relevant "supporting documents" or "information" regarding revenue decoupling or ratemaking issues. Rather, as discussed *infra*, the background information provided regarding Blue Planet and Mr. Mikulina's expertise is relevant to more general renewable energy and climate change issues.

3. Blue Planet Has Not Demonstrated that its Intervention in this Docket Would Not Unduly Broaden the Issues or Delay the Proceeding.

HAR § 6-61-55(b)(7) requires that motions to intervene make reference to "[t]he extent to which the applicant's participation will broaden the issues or delay the proceeding." In this regard, Blue Planet states that its intervention would not do so. Instead, Blue Planet maintains that it "intends for its participation to expedite the proceedings" Motion at 8.

However, Blue Planet's statement that "[t]he purpose of this Docket . . . is to move the State away from its dependence on imported fossil fuels"⁹ provides an indication of how Blue Planet's intervention as a party could unduly broaden the issues and delay the proceeding. As explained above, Blue Planet's interest in "distributed generation and energy efficiency" is not reasonably pertinent to the revenue decoupling and ratemaking issues to be addressed in this docket.

Similarly, Blue Planet's stated focuses on (1) "Energy and Climate", (2) "Hawaii as a Clean Energy Model", and (3) "Education" are issues of general environmental concern and also are not reasonably pertinent to decoupling or ratemaking issues. *See* Motion at 3-4. Moreover, Blue Planet's mission, which involves developing "methods of generation and choice of fuels"¹⁰

⁸ *See* Motion at 4.

⁹ Motion at 6 (internal quotation marks omitted).

¹⁰ Motion at 3.

also relates to topics beyond the scope of revenue decoupling or ratemaking. Accordingly, Blue Planet's intervention as a full party would likely unduly broaden the issues and delay the proceeding.

Given the expeditious procedural schedule that the Commission has set for this docket (e.g., the 60-day deadline for a joint proposal on decoupling; and the Commission's goal of issuing a decision approximately in the summer of 2009), this should be of particular concern in this instance.¹¹

4. **Blue Planet Has Not Demonstrated that the Consumer Advocate Will Not Adequately Represent its Interests in Decoupling.**

HAR § 6-61-55(b)(5) requires that motions to intervene make reference to "[t]he extent to which the applicant's interest will not be represented by existing parties[.]" Although the Initiating Order named the Consumer Advocate as a party to this docket,¹² Blue Planet maintains that its interest in its "public interest mission" will not be represented by the Consumer Advocate because "the primary interest of the Consumer Advocate remains consumers." Motion at 7.

However, the Consumer Advocate is "statutorily required to represent, protect, and advance the interest of all consumers." HRS § 269-51 (emphasis added). Thus, the Consumer Advocate is required to ensure that the decoupling mechanism being investigated in this docket treats all consumers (including Blue Planet's members) fairly. Given the Consumer Advocate's resources, including the expertise, knowledge and experience it has gained as a statutorily-named party to countless utility ratemaking proceedings, this is a task to which the Consumer Advocate is well-suited. As a result, Blue Planet's interest in the revenue decoupling and ratemaking

¹¹ Notably, at least eight motions to intervene have been filed to date in this docket by parties including: Life of the Land; Haiku Design and Analysis; Blue Planet; Hawaii Holdings, LLC; Hawaii Renewable Energy Alliance; the State of Hawaii Department of Business, Economic Development, and Tourism; Hawaii Solar Energy Alliance, and Tawhiri Power LLC.

¹² See Initiating Order at 9.

issues to be addressed in this proceeding will be adequately represented by the Consumer Advocate.

D. LIMITED PARTICIPATION WITHOUT INTERVENTION.

If the Commission finds that Blue Planet should be allowed to participate in this docket, then it may be appropriate to allow Blue Planet limited participation without intervention. The Commission in the past has denied intervenor status, but granted participation status pursuant to HAR § 6-61-56, and allowed the limited participation of persons seeking intervention on specific issues when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

For example, the Commission addressed participation without intervention in Re Hawaii Electric Light Co., Docket No. 05-0315, Order No. 22663 (August 1, 2006) ("Order No. 22663"). In that rate case, the Rocky Mountain Institute ("RMI") filed a motion to intervene, which was denied because RMI's stated experience and expertise were not reasonably pertinent to HELCO's request for a general rate increase. The Commission nevertheless granted RMI "limited participant status, pursuant to H.A.R. § 6-61-56, restricted to the issues set forth in its Motion to Intervene, i.e., tiered rate pricing, time of use pricing, energy cost adjustment charge, net energy metering and the renewable energy and energy efficiency program for affordable homes." Order No. 22663 at 8 (emphasis added). In addition, the Commission stated that "unless the commission decides otherwise at a future date, RMI's participation is limited to

responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing.” Id. at 8-9.

The Commission added:

RMI is cautioned that it must follow all applicable rules of the commission, and that the commission will reconsider RMI's participation in this docket if, at any time, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

Id. at 9.

In addition, in Re Hawaiian Electric Light Co., Docket No. 99-0207, Order No. 17532 (February 10, 2000) (“Order No. 17532”), the Commission denied the attempt of Citizen Utilities Company d/b/a The Gas Company (“TGC”) to intervene in HELCO’s rate case. However, the Commission granted TGC participant status, limited to HELCO’s proposed Standby Rider A.

The Commission stated:

the commission believes that TGC’s limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR § 6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;¹³ provided that TGC’s participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commission’s review, it is concluded that TGC’s efforts duplicate those of the Consumer Advocate’s, the commission will reconsider TGC’s further participation in this docket.

Order No. 17532 at 5-6 (footnote 6 omitted). The Commission issued similar orders in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989);¹⁴ and Re

¹³ In a footnote, the Commission added:

Unless ordered otherwise, TGC’s participation will extend no further. We also make clear that as part of its on-going review of HELCO’s request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC’s participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).

¹⁴ In Order No. 10399, the Commission denied the amended application to intervene of Puna Community Council, Inc. (“PCC”) in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC’s participant status would be “limited to the issue of the specific impact of HELCO’s proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets”, and (2) “PCC shall participate in the proceedings and present relevant documents and materials

Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992).¹⁵

Blue Planet has not requested participant status. If Blue Planet is allowed to participate in this docket, however, then Blue Planet should be designated a participant, and not an intervenor party. In addition, similar to the Commission's order with respect to RMI's participation in HELCO's 2006 test year rate case, Blue Planet should be permitted to participate by filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, Blue Planet's participation should not be permitted in any settlement agreement between the parties¹⁶ or to affect the schedule of proceedings or the statement of the issues, and Blue Planet should be required to comply with the Commission's Rules of Practice and Procedure.

II. CONCLUSION

Based on the foregoing, the HECO Companies respectfully request that Blue Planet's Motion to Intervene be denied.

and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.

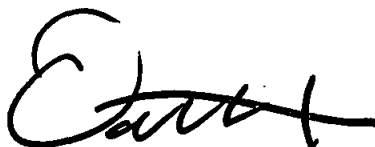
¹⁵ In Decision and Order No. 11668, the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a MECO rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. Decision and Order No. 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid's involvement in the proceeding. The Commission denied Legal Aid's Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participant status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

¹⁶ See, e.g., the Stipulated Regulatory Schedule attached as Exhibit A to Order No. 22884, issued September 21, 2006 in Docket No. 2006-0084, page 2, wherein the Commission limited a participant's participation by the condition that the participant's assent to any settlement agreement between all or any of the parties was not required:

To the extent settlement discussions occur collectively amongst the Parties, the Participant shall receive notice and have the opportunity to participate in such settlement discussions, provided that the assent of the Participant shall not be required to any settlement reached by all or any of the Parties.

Blue Planet has not requested participant status. If Blue Planet is allowed to participate in this docket, however, then Blue Planet should be designated a participant, and not an intervenor party. In addition, Blue Planet should be permitted to participate by filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, Blue Planet's participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and Blue Planet should be required to comply with the Commission's Rules of Practice and Procedure.

DATED: Honolulu, Hawaii, November 24, 2008.



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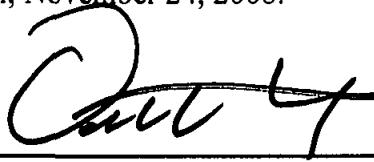
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN OPPOSITION TO BLUE PLANET FOUNDATION'S MOTION TO INTERVENE, together with this CERTIFICATE OF SERVICE, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Hand Delivery	U.S. Mail	
X		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
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	X	Timothy Blume Michael Yamane Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766
X		Kent D. Morihara, Esq. Kris N. Nakagawa, Esq. Rhonda L. Ching, Esq. Morihara Lau & Fong LLP 841 Bishop Street, Ste. 400 Honolulu, HI 96813

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DATED: Honolulu, Hawaii, November 24, 2008.



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